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BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MUNDELL

Chairman

JIM IRVIN

Commissioner

MARC SPITZER

Commissioner

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Arizona Corporation Commission

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IN THE MATTER OF THE GENERIC
PROCEEDINGS CONCERNING ELECTRIC
RESTRUCTURING ISSUES

Docket No. E-00000A-02-0051

IN THE MATTER OF ARIZONA PUBLIC
SERVICE COMPANY'S REQUEST FOR A
VARIANCE OF CERTAIN REQUIREMENTS OF
A.A.C. R14-2-1606

Docket No. E-01345A-01-0822

IN THE MATTER OF THE GENERIC
PROCEEDING CONCERNING THE ARIZONA
INDEPENDENT SCHEDULING
ADMINISTRATOR

Docket No. E-00000A-01-0630

IN THE MATTER OF TUCSON ELECTRIC
POWER COMPANY'S APPLICATION FOR A
VARIANCE OF CERTAIN ELECTRIC
COMPETITION RULES COMPLIANCE DATES

Docket No. E-01933A-02-0069

IN THE MATTER OF THE APPLICATION OF
TUCSON ELECTRIC POWER COMPANY FOR
APPROVAL OF ITS STRANDED COST
RECOVERY

Docket No. E-01933A-98-0471

**STAFF'S RESPONSE TO PANDA'S
REQUEST FOR OSC**

Arizona Corporation Commission Staff ("Staff") hereby responds to the Request for Order to Show Cause filed by Panda Gila River, L.P. ("Panda"). Staff believes that Panda's request is premature and should be denied at this time.

I. The Commission should reconcile its disposition of Panda's request for an OSC with its overall goals for electric restructuring.

A. If the Commission intends to re-examine the electric competition rules, it would be premature to order APS to immediately pursue a competitive bid.

What the Commission chooses to do in this matter should relate to the Commission's overall goals for electric restructuring. In the generic electric restructuring docket, the Commissioners have

1 each raised various questions for the parties to answer. Some of these questions raise the possibility
2 that one or more commissioners may be prepared to reconsider significant details of the electric
3 competition rules--and maybe even the wisdom of transitioning to competition altogether.

4 There are reasons to support a re-examination of the electric competition rules. In its Staff
5 Report in the Generic Electric Restructuring Docket, Staff identified deficiencies with some of the
6 existing electric competition rules and suggested areas in which amendments may be appropriate.
7 (Generic Staff Report at 67-68). Currently, there is virtually no retail competition, leaving one to ask
8 whether this results from some defect in the rules or the settlement agreements. Even APS asserts
9 that the present retail competition rules may not serve its customers' best interests.

10 Despite this background, Panda has asked the Commission to order APS to immediately
11 pursue a competitive bid. Panda's request focuses solely upon the variance docket and ignores the
12 broader context of the generic restructuring. Panda's Request for OSC, if granted, would have
13 implications for the Commission's consideration of electric competition as a whole. Accordingly, if
14 the Commission intends to reconsider substantial portions of the electric competition rules, it should
15 not require competitive bidding as contemplated by Rule 1606.B until it has resolved the variance
16 request and/or the generic docket.

17 B. Even if the Commission concludes that the existing electric competition rules do not
18 need to be amended, it is still too early to require APS to immediately pursue a
19 competitive bid.

20 If the Commission is satisfied with the rules as they currently exist, there would appear at
21 first impression to be little risk to moving forward with a competitive bid. However, Staff is
22 concerned that the uncertainty caused by these proceedings may affect the results of a competitive
23 bid. Specifically, the existence of the generic docket and APS' variance request, both of which have
24 yet to be processed, may signal the industry that the Commission has not finished its evaluation of
25 electric restructuring. APS' has the right pursuant to A.A.C. R14-2-1614.C to ask for a variance to
26 the rules and to have the Commission consider that request. The fact that the variance proceeding is
27 still pending may affect the results of the bid process.

28 Panda suggests that the Commission order a competitive bid so that we will have reliable
evidence about the capabilities of the market; although this is an appealing suggestion, a competitive

1 bid carried out under these circumstances may not be truly representative of the market. It will only
2 show what kinds of bids will be received under these specific circumstances, i.e., in a market
3 transitioning to competition in which the regulator has signaled that various details of that transition
4 may be subject to reconsideration. This kind of uncertainty may affect the results of the bidding
5 process. The Commission should not order the relief that Panda seeks until the conclusion of these
6 various pending proceedings.

7 **II. The process that Panda suggests for developing the bidding process is not practical.**

8 Panda seriously underestimates the amount of time and effort that will be required in order to
9 develop an appropriate competitive bidding process. Panda suggests that the Commission should
10 adopt a schedule in which APS submits a proposed RFP within five days of a Commission order,
11 other parties submit comments on APS' proposal five days later, the Commission and/or a consultant
12 issues its revisions to the RFP within five days, and APS issues the approved RFP the next day.
13 (Panda's Request at 10-11). This schedule fails to provide adequate time for public comment, staff
14 analysis, and Commission consideration.

15 The nature and specifics of the competitive bid process are issues that have been raised in
16 Staff's testimony in the variance docket and in the Staff Report in the generic proceeding. To address
17 these issues now, isolating them from the other issues presented by the variance request or the generic
18 docket, would result in piecemeal evaluation. The Commission should deal with this issue in the
19 context of the whole proceeding, rather than segregating it for premature review.

20 **III. Commissioner Spitzer's Questions.**

21 On March 26, 2002, Commissioner Spitzer issued a letter suggesting that the Commission
22 request responsive briefs from all parties and then convene a special open meeting to evaluate the
23 merits of Panda's proposal. Commissioner Spitzer also included questions for the parties to address.
24 At the present time, a briefing schedule to address Commissioner Spitzer's questions has not been
25 established. Staff will reserve its right to thoroughly address those questions in that subsequent brief.

26 However, Staff is concerned that Commissioner Spitzer's questions may be interpreted as
27 viewing the issues from an "either/or" perspective. Staff believes that the evaluation of APS'
28 proposed purchased power agreement ("PPA") should be independent of the analysis related to the

1 competitive bidding requirement of A.A.C. R14-2-1606.B. (Rowell Test. at 4). Staff believes that
2 APS' proposed PPA is unreasonable; however, that does not automatically ensure the reasonableness
3 of the results of any particular competitive bid. Similarly, an unsatisfactory result to the competitive
4 bid process does not necessarily mean that APS' proposed PPA is just and reasonable. Staff believes
5 that the Commission should evaluate these matters independently, without necessarily concluding
6 that the reasonableness and/or unreasonableness of one is probative of the reasonableness and/or
7 unreasonableness of the other.

8 **IV. The Commission should avoid acting with undue haste.**

9 Panda urges the Commission to grant its requested relief without delay. Specifically, Panda
10 wants the Commission to stay the APS variance proceeding and require APS to conduct an RFP for
11 its standard offer needs, arguing that such a bid process can be completed in as few as eighty-four
12 days. (Panda's Request at 10-11). Panda's request overlooks the context that surrounds this case:
13 this matter raises questions about the framework surrounding Arizona's transition to competition.

14 Various parties have pointed out potential problems with the rules, and these matters are now
15 pending before the Commission. There will be time after these matters have been explored for the
16 Commission to pursue competitive bidding or any other plan that results from this case or the generic
17 docket. In Staff's opinion, there is no reason to rush forward before the variance request or the
18 generic docket have been completed. The Commission should allow the records to be developed in
19 these matters, and then devise an appropriate regulatory structure based upon all the evidence before
20 it.

21 **V. Conclusion.**

22 For all the reasons set forth above, Staff believes that Panda's request is premature and should
23 be denied.

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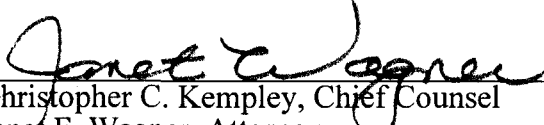
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RESPECTFULLY SUBMITTED this 5th day of April, 2002.


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Original and ten copies of the foregoing
filed this 5th day of April, 2002,
with:

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Copy of the foregoing mailed this 5th
day of April, 2002, to:

All parties of record

